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16 HON. RICARDO S. MARTINEZ

17 **UNITED STATES DISTRICT COURT**
18 **WESTERN DISTRICT OF WASHINGTON**

19 SURINDER S. BRATCH,)
20 Plaintiff,) Case Number: 2:09-cv-01724-RSM
21 v.)
22 EQUIFAX INFORMATION SERVICES)
23 LLC, and EXPERIAN INFORMATION)
24 SOLUTIONS, INC.,)
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1 of that year. The error involved combining the consumer files of Plaintiff and his brother, who have
 2 almost identical identifying information – the same middle and last names, very similar first names
 3 (Surinder and Sukhvinder), Social Security numbers that differ by only a single digit, and the same
 4 home address. When faced with such striking similarities, Equifax's combination of the two files
 5 does not reflect willfulness or recklessness.

6 Plaintiff claims that the brothers' files have "been mixed for several years," but the undisputed
 7 facts show that in 2004, Plaintiff's credit file included two inaccurate accounts, which were quickly
 8 corrected, and that mixing did not reoccur until July 2008, when Plaintiff disputed accurate late-
 9 payment information with respect to several of his own accounts. Despite Plaintiff's futile attempt to
 10 inflate the facts, he has abandoned his exorbitant claim of over \$400,000 in economic damages
 11 allegedly caused by Equifax. He now claims that Equifax's alleged errors resulted in only two 2008
 12 credit denials, both of which concerned his business, Bratch Auto Body & Repair, Inc. ("BAB"), and
 13 neither of which he can prove resulted from information supplied by Equifax.

ARGUMENT AND CITATION OF AUTHORITY

I. ALLEGED FCRA VIOLATIONS AND DAMAGES PREDATING NOVEMBER 18, 2004 ARE ABSOLUTELY BARRED BY THE FCRA'S STATUTE OF LIMITATIONS.

17 Plaintiff devotes much of his brief to his argument that factual disputes are present as to when
 18 he discovered the alleged FCRA violations. (*See Doc. 58 at 5:21-8:26.*) His argument is misleading
 19 and largely superfluous because, in addition to the FCRA's two-year statute of limitations, which is
 20 subject to the discovery rule, it also includes a statute of repose that bars all claims brought more than
 21 "5 years after the date on which the violation" occurred regardless of discover. 15 U.S.C. § 1681p.
 22 Plaintiff filed this action on November 18, 2009; thus, alleged violations that occurred prior to
 23 November 18, 2004 are barred by the statute of repose.

24 Plaintiff alleges that information associated with his brother's bankruptcy entered his Equifax
 25 credit file no later than September 2004, at which time he hired attorney Ronald Gomes to contact
 26 Equifax on his behalf. (*See Doc. 60, Bratch Decl. ¶¶ 3-4; see also Doc. 62, Gomes Decl. ¶ 3.*)
 27 Plaintiff admits that, by April 2005, accounts relates to his brother's bankruptcy had been removed
 28 from his credit file. (Doc. 58 at 6:23; Plf. Dep. at 400:23-401:20.) Equifax's business records, which

1 Plaintiff does not dispute, show that the accounts were in fact removed no later than January 2005.
 2 (See Doc. 55-2, Leslie Decl. ¶ 26.)

3 Section 1681e(b) of the FCRA requires credit reporting agencies, when preparing a “consumer
 4 report,” to “follow reasonable procedures to assure maximum possible accuracy” of the included
 5 information. Accordingly, Plaintiff’s claim that Equifax violated § 1681e(b) in 2004 is time barred
 6 because the alleged violation – inclusion of his brother’s information in his credit file – occurred no
 7 later than September 2004. Section 1681i(a)(1)(A) requires consumer reporting agencies, upon
 8 receipt of a consumer dispute, to “conduct a reasonable reinvestigation to determine whether the
 9 disputed information is inaccurate” and to complete the reinvestigation within 30 days. Accordingly,
 10 Plaintiff’s claim that Equifax violated § 1681i(a) with respect to its handling of the alleged Gomes
 11 dispute in September 2004, is likewise barred because the alleged violation – failure to complete a
 12 proper reinvestigation within 30 days – occurred no later than October 2004, 30 days after the dispute.
 13 As Plaintiff concedes, “he cannot bring any claims for violations that occurred more than five years
 14 before the case was filed, which is November 18, 2004.” (Doc. 58 at 6:7-8.)

15 Plaintiff obscures matters by incorrectly defining the issue as “whether Equifax has met its
 16 burden to show that there is no factual issue regarding whether Plaintiff discovered an FCRA
 17 violation during the time period running between five years before the case was filed and two years
 18 before the case was filed. That is, between November 18, 2004 and November 18, 2007.” (Doc. 58 at
 19 6:9-11.) The record, however, does not support a finding that *any* FCRA violations occurred during
 20 this time period, nor does Plaintiff make such an allegation in this portion of his brief.¹ In short, no
 21 violations were available for Plaintiff to discover, making his entire argument superfluous.

22

23 ¹ Elsewhere, Plaintiff asserts that “Equifax reinserted the bankruptcy into Plaintiff’s report on
 24 March 9, 2006.” (Doc. 58 at 13:27-14:2.) Frozen scans from February and April 2006, however,
 25 show that no bankruptcy was in his file at the time. (Suppl. Leslie Decl. ¶ 6.) The only reason that a
 26 2006 reference to the brother’s bankruptcy appears in the 2008 disclosure referenced by Plaintiff’s
 27 counsel is that the combined credit file contained the brother’s credit-file information from prior
 28 years. (*Id.* ¶ 8.) Thus, while Equifax representative Ms. Mixon confirmed at her deposition that the
 July 29, 2008 credit file showed a bankruptcy and that it contained a reported date of March 9, 2006,
 that in no way demonstrates that the bankruptcy appeared in Plaintiff’s separate credit file in March
 2006, or at any time preceding the July 2008 merger. (See *id.*)

1 Plaintiff also argues that Equifax made inconsistent statements regarding his 2004 credit file
 2 and “cannot have it both ways.” (See Doc. 58 at 6:13-22.) Specifically, Plaintiff claims that Equifax
 3 stated both that Plaintiff discovered the bankruptcy on his credit file in 2004 and that Plaintiff’s credit
 4 file did not contain a bankruptcy. (*Id.*, citing Doc. 54 at 14:12-13 & n.3.) This misstates Equifax’s
 5 position. In fact, Equifax’s business records demonstrate that, although a bankruptcy did not appear
 6 in the “public records” section of Plaintiff’s 2004 credit file, two accounts were listed as “included in
 7 bankruptcy.” (Leslie Decl. ¶¶ 25-27.) The parties do not dispute that Plaintiff’s 2004 credit file
 8 included information related to his brother’s bankruptcy; the dispute (if any) relates solely to the form
 9 in which that information appeared.

10 **II. PLAINTIFF CANNOT ESTABLISH THAT DENIALS OF BUSINESS CREDIT IN 2008
 11 RESULTED FROM INACCURATE INFORMATION SUPPLIED BY EQUIFAX.**

12 **A. No evidence demonstrates that Equifax supplied Key Bank with inaccurate
 13 information in March 2008.**

14 Plaintiff insinuates that Equifax may have reinserted information regarding his brother’s
 15 bankruptcy sometime before July 2008 by stating that “[h]e did not suspect that [the bankruptcy
 16 information] went back on his credit report until the denial from Key Bank in March 2008, which Key
 17 Bank indicated was because of a ‘public record’ item.” (Doc. 58 at 6:23-25.) The only evidence
 18 Plaintiff offered to support this indication, however, is pure hearsay consisting of Plaintiff’s
 19 statements regarding what a Key Bank employee told him and an unauthenticated “Business Service
 20 Center Worksheet” that he allegedly received from Key Bank. (Plf. Dep., Ex. 38.) Moreover, the
 21 unauthenticated Key Bank document, even if accepted as true, does not demonstrate that Key Bank
 22 denied a business loan to BAB “because of a ‘public record’ item” on Plaintiff’s Equifax credit report.
 23 The document lists the following reasons for denial of BAB’s business-loan application: “Excessive
 24 Number of Delinquencies *and/or* Public Records”; “Business rating below industry norm”; “Credit
 25 rating of guarantor deemed unsatisfactory”; and “Insufficient time as current owner.” (*Id.*, emphasis
 26 added.) The document includes “Public Records” as one of two possibilities within one of four
 27 reasons for denial of the loan application. In addition, the reasons given for denial imply that Key
 28 Bank also considered a *business* credit report regarding BAB when it made its decision, which are not

1 covered by the FCRA.² See 15 U.S.C. § 1681a(d)(1).

2 Moreover, the document does not state that Key Bank obtained a credit report from Equifax.
 3 Plaintiff initially testified that he believed Key Bank had obtained credit reports from both Equifax
 4 and Experian Information Solutions. (Doc. 55-5, Plf. Dep. at 338:7-16.) Subsequently, he testified
 5 that he had not seen the credit report(s) Key Bank used and could not recall their source. (Doc. 56-1,
 6 Plf. Dep. at 475:15-25.) Plaintiff's "tri-merge" credit report from May 2008, however, indicates that
 7 Key Bank in fact obtained credit reports from both Experian and Equifax and that *the bankruptcy*
 8 *appeared solely on the Experian report.* (See *id.* 482:6-484:12 & Ex. 62.) Equifax's business records
 9 likewise affirm that no bankruptcy information reappeared in Plaintiff's credit file until July 2008.
 10 (See Leslie Decl. ¶¶ 24-29; Suppl. Leslie Decl. ¶¶ 5-6, 8.)

11 In short, Plaintiff has no evidence – admissible or otherwise – that any information regarding
 12 his brother's bankruptcy was reinserted into his Equifax credit file before July 2008, or that Equifax
 13 provided Key Bank with any inaccurate information regarding Plaintiff. On the other hand, Equifax
 14 has produced evidence demonstrating that Plaintiff's credit file was clear until July 2008. Based on
 15 this record, no reasonable juror could find that Equifax played any improper role in Key Bank's
 16 decision to deny BAB's March 2008 business-loan application.

17 **B. No admissible evidence supports a finding that Equifax supplied BOA with a**
18 credit report in September 2008.

19 Even though the files of Plaintiff and his brother were merged in July 2008, which is prior to
 20 Bank of America's ("BOA's") credit denial in September 2008, Plaintiff still cannot meet his burden
 21 to show that Equifax caused that denial. First, as with Key Bank, Plaintiff bases his claim on a
 22 unauthenticated hearsay document. No evidence from BOA authenticating the document is in the
 23 record. Further, even if admissible, the document does not show that BOA denied BAB's loan
 24 application based on inaccurate information supplied by Equifax. Absent that, Plaintiff has failed to
 25 support this claim and it should be denied.

26 **C. Neither alleged denial is recoverable as both are business damages.**

27 ² Contrary to Plaintiff's unsupported assertion that "no credit report for Bratch Auto Body"
 28 exists (Doc. 58 at 10:9-10), Equifax has a business credit file for BAB. (Leslie Suppl. Decl. ¶ 9.)

Even if Plaintiff could prove that Equifax reported inaccurate information to Key Bank or BOA, he does not dispute that BAB applied for credit, not Plaintiff. Moreover, BAB applied for credit to be used *solely* for business purposes, not for both personal and business purposes.

**1. Courts have overwhelmingly held that when the use of credit is for
business, the damages are not recoverable under the FCRA.**

Where an individual's credit information is supplied solely for business purposes, courts – including some in the Ninth Circuit – have determined that the credit report does not fall within the realm of the FCRA, which was implemented to protect consumers, not businesses. *See, e.g., Johnson v. Wells Fargo Home Mortg., Inc.*, 558 F. Supp. 2d 1114, 1122 (D. Nev. 2008) (FCRA does not provide for damages resulting from an attempt to secure credit for business purposes.); *Natale v. TRW, Inc.*, 1999 WL 179678, at *3 (N.D. Cal. Mar. 30, 1999) (FCRA claim to “recover damages related primarily to his business” not allowed); *Mathews v. Worthen & Trust Co.*, 741 F.2d 217, 219 (8th Cir. 1984) (finding transaction exempt from FCRA because credit report was used solely for a commercial purpose); *Stich v. BAC Home Loans Servicing, LP*, 2011 WL 1135456, *4 (D. Col. Mar. 29, 2011) (individual's credit report used to obtain business credit, as opposed to personal, not within the realm of FCRA); *George v. Equifax Mortg. Servs.*, 2010 WL 3937308, *2 (E.D.N.Y Oct. 5, 2010) (“It is well established that the FCRA does not apply to business or commercial transactions, even when a consumer’s credit reports impact such transactions.”); *Tilley v. Global Payments, Inc.*, 603 F. Supp. 2d 1314, 1328 (D. Kan. 2009) (businesses not recoverable under the FCRA); *Lucchesi v. Experian Info. Solutions, Inc.*, 226 F.R.D. 172, 174 (S.D.N.Y. 2005) (consumer report generated for purposes of obtaining financing for the individual’s business not a “consumer report” under the FCRA); *Yeager v. TRW, Inc.*, 961 F. Supp. 161, 162-63 (E.D. Tex. 1997) (report issued in response to application for commercial credit not a “consumer report” under the FCRA.); *Podell v. Citicorp Diners Club, Inc.*, 914 F.Supp. 1025, 1036 (S.D.N.Y. 1996) (“The loss of plaintiff’s opportunity to participate in a real estate enterprise due to adverse information included in a furnished credit report is not the sort of loss cognizable under the FCRA.”).

A report about a consumer pertaining to credit in connection with a business operated by that consumer is not a consumer report. *Vandyke v. Northern Leasing System, Inc.*, 2009 WL 3320464, *4 (E.D. Cal. Oct. 14, 2009). Plaintiff’s argument to the contrary ignores the Congressional Record,

which states that the purpose of the FCRA “is to protect consumers from inaccurate or arbitrary information in a consumer report It does not apply to reports used for business, commercial, or professional purposes.” 116 Cong. Record 36, 572 (1970) (emphasis added); see also 15 U.S.C. § 1681a(d)(1)(A) (purpose of FCRA is to protect consumers applying for “credit or insurance to be used primarily for personal, family, or household purposes”). The FTC has also concluded that “[a] report on a consumer for credit or insurance in connection with a business operated by the consumer is not a consumer report and the Act does not apply to it.” 55 Fed.Reg. 18811, 18814 (1990). Plaintiff’s claim for damages due to losses incurred by BAB are not actionable under the FCRA.

2. *Dennis and Pourfard* are distinguishable.

Plaintiff relies primarily on two cases, *Dennis* and *Pourfard*, to argue that he should be able to recover damages sustained by his business, BAB.³ Both, however, are distinguishable. In *Dennis v. BEH-1, LLC*, 520 F.3d 1066, 1068 (9th Cir. 2008), the plaintiff sued a consumer reporting agency for FCRA violations in preparing a credit report that included an inaccurate judgment. The district court, in a “terse order stating no reasons,” granted summary judgment and the Court of Appeals reversed on the plaintiff’s claims for violation of §§ 1681e(b) and 1681i(a). *Dennis*, 520 F.3d at 1071. The district court awarded summary judgment because the Plaintiff did not offer evidence of actual damages. *Id.*, 1069. The Court of Appeals held that there was credible evidence of actual damages, which included emotional distress, higher security deposit demanded by a landlord, and denial of applications of credit for Plaintiff to start a business. *Id.* Plaintiff did not have an ongoing business that sought credit, but instead was personally applying to finance a venture. *Id.* The Court did not examine whether any particular report was a “consumer report” as defined by the FCRA or whether business damages are recoverable under the FCRA. Thus, to say that *Dennis* holds that business damages are recoverable under the FCRA is a stretch. It is clear, however, that the Plaintiff in that case was personally applying for credit, as opposed to here where BAB applied for credit.

In *Pourfard v. Equifax Info. Servs. LLC*, 2010 WL 55446 (D. Or. Jan. 7, 2010), the Plaintiff sued a consumer reporting agency for violations of the FCRA related to the reporting of a disputed

³ Plaintiff also cites to *Gorman v. Wolfpoff & Abramson, LLP*, 584 F.3d 1147, 1174 (9th Cir. 2009), which relies on *Dennis*, but does not address the business-damages issue.

1 collection account. Defendant moved for summary judgment on various grounds, including that the
 2 cancellation of a credit account did not constitute damages under the FCRA because it was a business
 3 credit account. *Id.*, *6. The Plaintiff, however, responded to the Motion for Summary Judgment
 4 stating that the account was used for both personal and business purposes and that he was personally
 5 liable for the purchases. *Id.* The Court found a genuine issue of fact as to whether Plaintiff suffered
 6 economic loss. *Id.* Here, Plaintiff admitted that both of the alleged denials, Key Bank and BOA,
 7 relate solely to credit for BAB. (Plf. Dep. at 115:1-116:9, 118:9-119:12, 338:5-9, 339:14-341:20,
 8 467:23-469:4; 472:21-473:2, 517:25-518:18.) It was, in fact, BAB that applied for the credit, not
 9 Plaintiff. (*Id.*) Thus, contrary to *Dennis* and *Pourfard*, where the consumers were personally
 10 applying for credit, or the account at issue was to be used for both personal and business purposes,
 11 summary judgment should issue on Plaintiff's alleged business damages.

12 **D. Plaintiff lacks support for claims under FCRA §§ 1681b and 1681g.**

13 **1. The Facts Do Not Support Plaintiff's § 1681b Claim.**

14 In Plaintiff's amended complaint, filed on March 2, 2011, he raised for the first time a claim
 15 under § 1681b, which enumerates the circumstances under which consumer reporting agencies may
 16 furnish information from a consumer's credit file, *see* 15 U.S.C. § 1681b(a)(3)(A). He did not,
 17 however, specify when or to whom Equifax had issued a credit report without a permissible purpose.
 18 (*See* Doc. 50 ¶¶ 11, 18.) In his response brief, Plaintiff alleges – for the first time – that “Equifax
 19 violated this subsection because Equifax gave Plaintiff's report to companies to use in connection
 20 with a credit transaction that did not involve Plaintiff (but probably involved his brother).” (Doc. 58
 21 at 21:14-16.) Putting aside the fact that Equifax had no prior notice of this claim, it is nonetheless
 22 meritless because the facts do not support a finding that Equifax provided Plaintiff's credit report to
 23 any entities other than those with which Plaintiff was doing business.

24 Plaintiff identifies several “inquiries” listed on his July 28, 2008 credit-file disclosure made by
 25 creditors with which he denies doing business. (Doc. 60, Plf. Decl. ¶ 10 & Ex. C.)⁴ As the disclosure

26 ⁴ Specifically, the disputed inquiries were made by: American Express/SEIMS – August 9,
 27 2006; Associated Credit Systems – April 26 and September 6, 2007; CIS Information Services –
 28 August 1, 2006; Landsafe Credit – April 9, 2007; Nationwide Funding LLC – August 2, 2007; and
 Yellow Book USA – April 18, 2007. (Doc. 60-4, Plf. Decl., Ex. C at 24-26.)

1 demonstrates, however, all of the inquiries were made *before* the file merger and thus did not result in
 2 release of any information regarding Plaintiff. (See Suppl. Leslie Decl. ¶¶ 3-4.)

3 **2. The Facts Do Not Support Plaintiff's § 1681g Claim.**

4 Plaintiff's amended complaint also includes a claim under § 1681g, which requires consumer
 5 reporting agencies to clearly and accurately disclose to the consumer, upon request, all information in
 6 the consumer's credit file, the sources of the information, the identities of certain recipients of the
 7 consumer's report, and other credit-related information outlined in the provision. *See* 15 U.S.C.
 8 § 1681g(a). Plaintiff added this claim but did not specify when Equifax allegedly failed to supply
 9 Plaintiff with his credit file. (See Doc. 50 ¶¶ 12, 18.) In his response to Equifax's motion for partial
 10 summary judgment, Plaintiff alleges for the first time that he tried to obtain a credit-file disclosure in
 11 July 2010, after he had filed this lawsuit. (Doc. 58 at 22:1-8.) He states that he requested his credit
 12 file from Equifax on two occasions in July 2010, once online and once by telephone, but that the file
 13 had been "blocked" by Equifax. (*Id.*)

14 Equifax objects to this claim because it has had no opportunity to investigate Plaintiff's factual
 15 assertions, made for the first time in his response to Equifax's motion. Plaintiff certainly knew of
 16 these alleged facts in July 2010, yet he failed to file an amended complaint until March 2, 2011 and,
 17 more importantly, never updated his responses to Equifax's interrogatories to reflect the new basis for
 18 his claim. Parties are required to supplement their interrogatory responses "in a timely manner if the
 19 party learns that in some material respect the disclosure or response is incomplete or incorrect, and if
 20 the additional or corrective information has not otherwise been made known to the other parties
 21 during the discovery process or in writing." Fed. R. Civ. P. 26(e). "If a party fails to provide
 22 information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that
 23 information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was
 24 substantially justified or is harmless." Fed. R. Civ. P. 37(c)(1). For this reason, Plaintiff's eleventh-
 25 hour claim should be rejected.

26 **III. PLAINTIFF CANNOT ESTABLISH A WILLFUL VIOLATION OF THE FCRA.**

27 The FCRA permits an award of punitive damages only if a consumer reporting agency
 28 "willfully fails to comply with any requirement" imposed by the Act. 15 U.S.C. § 1681n(a)(2). Willful misconduct encompasses both intentional and reckless violations of the law. *Safeco Ins. Co.*

of Am. v. Burr, 551 U.S. 47, 68-69 (2007). Reckless misconduct is “conduct violating an objective standard: action entailing ‘an unjustifiably high risk of harm that is either known or so obvious that it should be known.’” *Safeco*, 551 U.S. at 68 (quoting *Farmer v. Brennan*, 511 U.S. 825, 836 (1994)). Plaintiff must establish that Equifax’s alleged violation of the law was “not only a violation under a reasonable reading of the statute’s terms, but . . . ran a risk of violating the law substantially greater than the risk associated with a reading that was merely careless.” *Id.* at 69. Plaintiff cannot carry that heavy burden here.

A. Plaintiff may not rely on actions taken by Equifax outside the statute of limitations to establish willfulness.

Plaintiff claims that he “has evidence that Equifax’s inaccurate reporting spanned several years” beginning with “the reporting of the bankruptcy in 2004” and that this demonstrates willfulness. (Doc. 58 at 13:25-27.) As discussed above, the evidence does not support a finding that the alleged FCRA violations spanned several years. Moreover, Plaintiff cannot bootstrap his willfulness claim by reaching back to 2004 to rely on claims barred by the statute of limitations. The alleged 2004 violations are both time barred and are essentially unconnected to the alleged 2008 violations, which occurred years later.

According to Plaintiff, “the dispute sent by Gomes and the deletion of the bankruptcy [in 2004] are important because they show that Equifax was on notice that it was mixing Plaintiff’s credit information with his brother” and that it “should have taken extra precaution to prevent mixing that information in the future.” (Doc. 58 at 14:8-12; *see also id.* 16:2-6, 18:7-16.) If Equifax should have taken precautions, however, those precautions would have to have been taken in 2004, when Equifax was allegedly notified of the problem. Thus, Equifax’s alleged failure to use extra precautions cannot provide a basis for a willfulness claim.

B. Many of the alleged FCRA violations are unsupported by the evidence and/or are improperly raised and, for this reason, cannot establish willfulness.

Plaintiff raises several minor claims, some for the first time in his response to Equifax’s motion for partial summary judgment, that are not supported by the evidence and/or are not properly before the Court. First, Plaintiff alleges a number of errors related to his dispute letter sent to Equifax in July 2008. (*See Doc. 58 at 16:18-18:6.*) Equifax acknowledges that it did not correctly describe

1 the nature of Plaintiff's disputes in the ACDVs it sent to two creditors in response to Plaintiff's July
 2 2008 dispute letter. (Mixon Supp. Decl. ¶¶ 3-5.) The fact of the matter is, however, that the error
 3 resulted in no harm to Plaintiff. Even though Plaintiff disputed the payment history, where as the
 4 ACDVs described the accounts as "not his," the creditors verified the payment history as well as the
 5 identifying information on the accounts. (Mixon Supp. Decl. ¶ 6.) Consequently, Equifax complied
 6 with Plaintiff's request to investigate the payment history on the two accounts in its July 2008
 7 reinvestigation. (Mixon Supp. Decl. ¶ 7.) Furthermore, Plaintiff admitted that at least one of the two
 8 disputed accounts was in fact accurate (Plf. Dep. at 483:14-17), which eliminates all new and old
 9 claims regarding reinvestigation of that account. *See Guimond v. Trans Union Credit Info. Co.*, 45
 10 F.3d 1329, 1333 (9th Cir. 1995).

11 Plaintiff's assertion that Equifax erred when it failed to investigate in response to his October
 12 8, 2008 telephone call to Equifax is also meritless. (Doc. 58 at 19:2-9.) As Equifax explained in its
 13 deposition, and now again by supplemental declaration, Plaintiff's October 8, 2008 telephone call was
 14 not a dispute of information on his credit file. (Doc. 61, Ex. K, Mixon Dep., 124:8-18; Mixon Supp.
 15 Dec., 11.) Plaintiff called to check the status of his previous dispute; Equifax therefore treated the call
 16 as a consumer inquiry and answered Plaintiff's questions. (Doc. 61, Ex. K, Mixon Dep., 124:8-18;
 17 Mixon Supp. Dec., 12.)

18 Finally, for reasons discussed above, Plaintiff's claims related to the alleged improper release
 19 of information in response to inquiries, the credit report allegedly sent to BOA, and his attempt to
 20 obtain a credit-file disclosure in July 2010 are meritless and/or procedural barred due to Plaintiff's
 21 failure to raise the claims in a timely manner.

22 In short, Plaintiff's litany of alleged violations of the FCRA boils down to a few allegations
 23 associated with the merger of his credit file with brother's in 2008. Furthermore, even if the alleged
 24 minor FCRA violations Plaintiff now asserts were supported, they do not add up to willfulness.

25 **C. Equifax's handling of the 2008 disputes was not reckless.**

26 Plaintiff alleges that, in September 2008, attorney William Shofstall mailed a dispute letter to
 27 Equifax on Plaintiff's behalf, but that Equifax willfully failed to respond. (See Doc. 58 at 18:17-23.)
 28 Equifax has no record of receiving a letter from Mr. Shofstall. (Doc. 55, Mixon Decl. ¶ 23.) More

1 importantly, Plaintiff has no evidence that Equifax's mailroom procedures are generally ineffective, or
 2 that Equifax willfully mishandled the Shofstall letter in particular. A single lost letter does not
 3 amount to a willful violation of the FCRA, even when combined with the other alleged errors.

4 Plaintiff makes two arguments regarding the October 2008 dispute. First, he claims that
 5 Equifax willfully violated the FCRA by declining to send Plaintiff's post-investigation credit-file
 6 disclosure to him before verifying Plaintiff's address. (*See Doc. 58 at 19:10-20:6.*) The FCRA
 7 instructs consumer reporting agencies to require consumers to "furnish proper identification" before
 8 providing a disclosure. 15 U.S.C. § 1681h(a)(1). This protects consumer privacy by reducing the
 9 possibility of release of consumer financial data to anyone other than the consumer. Given that the
 10 address Plaintiff supplied with his October 2008 letter did not match the address in Equifax's credit
 11 file at that time, no reasonable juror could conclude that Equifax's request for a simple identity
 12 verification constituted a willful violation of the FCRA.

13 Finally, Equifax's belief that it had 45 days to resolve the October 2008 dispute (instead of
 14 30), even if incorrect, was not reckless and resulted in no harm to Plaintiff.

15 **D. Merger Of Files Due To Human Error Was Not Reckless.**

16 Plaintiff mischaracterizes and inflates the evidence in his discussion of Equifax's actions
 17 leading to the merger of the two credit files. (*See Doc. 58 at 14:15-15:4, 15:10-26.*) This is not a
 18 case, as Plaintiff implies, involving two typical family members sharing an address. Plaintiff and his
 19 brother, who were both adults at the time, have almost identical identifying information – they share
 20 the same middle and last names, have very similar first names, and have Social Security numbers that
 21 differ by only a single digit. Under these circumstances, the error made by Equifax's customer-
 22 service representative could not possibly be construed as a risk "substantially greater than the risk
 23 associated with . . . mere[] careless[ness]." *Safeco*, 551 U.S. at 69.

24 **CONCLUSION**

25 Equifax's motion should be granted, and this Court should dismiss all claims against Equifax
 26 involving conduct predating July 2008, alleged willfulness, economic damages, and alleged violations
 27 of sections 1681b and 1681g of the FCRA.

1 This 6th day of May, 2011.

2
3 EQUIFAX INFORMATION
4 SERVICES LLC

5 /s/Lewis P. Perling
6

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CERTIFICATE OF SERVICE

I hereby certify that on this day electronically filed **DEFENDANT EQUIFAX INFORMATION SERVICES REPLY IN FURTHER SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT** with the Clerk of the Court using the CM/ECF system, which will automatically send email notification of such filing to the attorneys of record in the case.

Dated: May 6, 2011.

/s/Lewis P. Perling